

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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AMERICAN FAMILY MUTUAL
INSURANCE COMPANY,

Plaintiff and Counterdefendant,

v.

SOUTHWEST LANDSCAPING &
MAINTENANCE, INC., et al.,

Defendants and Counterclaimants.

SOUTHWEST LANDSCAPING &
MAINTENANCE, INC., et al.,

Third Party Plaintiffs,

v.

JAMES C. MILLER,

Third Party Defendant.

2:09-CV-1878-LRH-PAL

ORDER

Before the court is defendants/third party plaintiffs Southwest Landscaping & Maintenance, Inc.; Miguel Morales; Josefina Morales; and Conrado Herrera's (collectively "Southwest defendants") motion to substitute non-party Misty Simmons ("Simmons") and the Misty Simmons Agency ("MSA") for defendants Doe I and Roe I, respectively. Doc. #43.¹

¹ Refers to the court's docket number.

1 **I. Facts and Procedural History**

2 This action stems from an insurance coverage declaratory relief action initiated by plaintiff
3 American Family Mutual Insurance Company (“American Family”) against the Southwest
4 defendants. Doc. #1. The Southwest defendants filed counterclaims against American Family and a
5 third-party complaint against its agent James Miller (“Miller”) and unknown Doe and Roe
6 defendants. Doc. #15. Thereafter, the Southwest defendants filed the present motion to substitute
7 Simmons and MSA for defendants Doe I and Roe I, respectively. Doc. #43.

8 **II. Discussion**

9 A party may amend its pleadings after a responsive pleading has been filed by leave of
10 court. FED. R. CIV. P. 15(a)(2). Leave of court to amend should be freely given when justice so
11 requires and when there is no undue delay, bad faith, or dilatory motive on the part of the moving
12 party. *See Wright v. Incline Village General Imp. Dist.*, 597 F.Supp.2d 1191 (D. Nev. 2009); *DCD*
13 *Programs, LTD v. Leighton*, 883 F.2d 183 (9th Cir. 1987).

14 Here, the Southwest defendants request leave to amend their third-party complaint to add
15 Simmons and MSA as defendants to this action because Simmons was the original insurance agent
16 for American Family when Miguel Morales purchased the underlying policies at issue in the
17 declaratory relief action. *See* Doc. #43. After reviewing the documents and pleadings on file in this
18 matter, the court finds that there is no undue delay, bad faith, or dilatory motive on behalf of the
19 Southwest defendants. Further, the court finds that the existing parties, plaintiff American Family
20 and third-party defendant Miller, would not be prejudiced by allowing amendment because their
21 respective rights are not impacted by the inclusion of another party. Accordingly, the court shall
22 grant the Southwest defendants’ motion to substitute.

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1 IT IS THEREFORE ORDERED that defendants/third-party plaintiffs' motion to substitute
2 (Doc. #43) is GRANTED. The clerk of court is directed to substitute Misty Simmons and the
3 Misty Simmons Agency as defendants for Doe I and Roe I in the amended third-party complaint
4 (Doc. #15), respectively.

5 IT IS FURTHER ORDERED that defendants/third-party plaintiffs are directed to serve a
6 copy of the amended third-party complaint (Doc. #15) along with a summons upon defendants
7 Misty Simmons and the Misty Simmons Agency in accordance with Rule 4 of the Federal Rules of
8 Civil Procedure within thirty (30) days of entry of this order.

9 IT IS SO ORDERED.

10 DATED this 5th day of February, 2011.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE